

**REMARKS****I. Status of Claims**

Claims 52-57, 60-62 and 67-76 are pending in the present application and Claims 77-83 are withdrawn. New Claims 84-86 have been added.

**II. Request Withdrawal of Restriction of Claims 77-83**

Claim 77 has been amended to depend on Claim 67 and as such it is submitted that the restriction as to Claim 77 (and Claims 78-83 depending thereon) should be withdrawn and thus Claims 77-83 should be rejoined. See, MPEP § 821.04.

**III. Section 112**

Claims 70 and 76 have been rejected under 35 USC §112 as to certain language in the claims.

Claim 70 has been amended to specify that the "detected special event is an indication of hardware failure." Such a hardware failure is described in Par. 00155 of the present specification:

Finally, if the special barcode is recognized as indicating "EAS fault" (580) the system performs a predetermined hardware fault sequence (582) and then loops back as above via path 584. The hardware fault

sequence can comprise a variety of actions. For example, it may call for shutting down the POS because the EAS system has failed. A variety of special barcodes can be implemented to identify the nature of the hardware fault more specifically. For example, A code could be provided that indicates a failure in the power supply of the EAS system. The POS system could then prompt the operator to replace the power supply in the EAS system or to order a replacement module.

Claim 76 has been amended to specify that the detected event comprises which of the plurality of sensors acquired the product data (during reading by the data reader). It is submitted that the present application provides adequate support as noted from the present specification at Paragraphs 00121-00123:

[00121] It should be appreciated that the certain of the embodiments or features of the embodiments disclosed herein may be readily combined with other of the embodiments. For example, any of the methods or features of Figs. 2-4 may be implemented into the method of Fig. 5.

[00122] Other modifications may be implemented. For example, where the RFID transmitter/receiver or the EAS sensor/deactivator is a multi-sensor or multi-plane unit (such as disclosed in U.S. Patent No. 5,917,412 or U.S. Application Ser. No. 10/062,274 filed February 1, 2002, these patents having already been incorporated by

reference), the sensing system may acquire information as to which sensor/antenna (of a multi-sensor unit) was the sensor which first detected the tag, or the order of detection as between multiple sensors, namely upstream sensor or downstream sensor; vertical sensor or horizontal sensor. Such information may provide an indication of the motion of the item as passed through the scan volume by the operator.

[00123] In another embodiment where the scanner is a multi-plane scanner such as one of the PSC Inc. Magellan® scanners, the system may also acquire information as to which window, or even which scan line, of the scanner provided the (first) successful bar code read. The RFID/EAS sensor data (i.e. in multi-sensor or multi-plane sensor systems which sensor detected the tag) may also be correlated to the scanner data (i.e. which scan line scanned the barcode, and through which window) to provide further information for analyzing system operation. For example, knowing either the window or the scan line (or both), the system may deduce the position/orientation of the item from the position/orientation of the barcode being read.

As such it is submitted that Claims 70 and 76 comply with the requirements of Section 112.

### III. Section 103

Claims 52-57, 60-62 and 67-65 have been rejected under 35 USC §103 over Canipe '288 and Claims 57, 60 and 62 have been rejected under 35 USC §103 over Wike '602. These rejections are respectfully traversed and each of the rejections will now be addressed in turn.

#### A. Claim 52

Dependent Claim 52 includes limitations:

"operating in an automatic activation mode whereby the EAS system is automatically activated in response to a signal from the data reader of good read of a product code;

operating in a manual activation mode whereby the EAS system is manually activated by action of an operator;

detecting a manual activation of the EAS system to deactivate an EAS tag; and

storing an indication of the detected manual activation of the EAS system."

By contrast, although Canipe '288 discloses at paragraph 0053 that "the EAS/Scanner may be enabled, either by a sales associate or automatically by a signal transmitted from the processor, for deactivating an EAS tag", there is no indication of the Canipe '288 system of logging or otherwise storing an

indication of manual activation of the EAS system as opposed to an automatic activation. The Canipe '288 system only will log a transaction "to track items that pass through the fixed POS system without having an active EAS tag deactivated by the station." (Canipe '288, ¶ 0047). Thus, this rejection is traverse and it is requested that a reference be cited disclosing the limitation, or the rejection removed. See, MPEP § 2144.03. Since the cited limitation is not disclosed in Canipe '288, it is submitted that a *prima facie* case of obviousness cannot be made as to Claim 52.

Moreover it is submitted that Claim 52 is non-obvious over Canipe '288 because Canipe '288 would appear to be merely concerned with data logging associated with failed deactivation of an EAS tag. (See, Paragraph 0042 "In a retail store environment, for example, an article may be purchased at a fixed POS station, but the EAS tag on the article may be inadvertently not deactivated." See, Paragraph 0047: "A system consistent with the invention may log the transaction, e.g., in a database, to track items that pass through the fixed POS station without having an active EAS tag deactivated by the station).

Therefore it is submitted that Claim 52 is non-obvious and allowable over Canipe '288.

B. Dependent Claims 53-56 and 84

Claims 53-56 and new Claim 84 should be allowable in part as depending upon an allowable base claim. Additional distinguishing aspects of these claims will be set forth in the following.

In the Office Action it was indicated "the Examiner notes that as the manual activation information is understood to have been present in order to successfully disable the tag, the log is understood to be a log of transactions where manual activation occurred." As discussed above, Canipe '288 does not distinguish between manual or automatic activation of the EAS system but is only concerned with logging, and presumably therefore also reporting, failed deactivation. Thus Canipe '288 does not disclose transmitting an indication of the detected manual activation as in Claim 53.

Claim 54 includes "the limitation of storing and indication of the detected manual activation . . . in response to receiving the transmitted indication." By action of this limitation, the indication of the detected manual activation may be stored automatically by operation of receiving the transmitted indication. Canipe '288 discloses only logging of failed deactivation and thus does not disclose such a step.

In the Office Action it is asserted "Though silent to storing an identifier of the operator, the examiner notes that it would have been an obvious expedient to do so, since it is desired to identify operator error, and therefore if [it] a specific operator is to be identified, some identification of the operator would be required." Here again the Office Action makes the assumption of Canipe '288 wanting to know when operator error occurs, *i.e.*, failure to deactivate an EAS tag. By contrast, the information stored according to Claim 55 is whether a manual activation of the EAS system has occurred. Manual activation does not necessarily indicate operator error or failure to deactivate but may indicate poor operating technique or potential fraud. Neither the step nor its motivation is disclosed in Canipe '288 and thus it is submitted that Claim 55 provides further distinguishing features for nonobviousness and allowability.

Claim 56 includes the limitation of determining a date and time when the manual activation of the EAS system is detected; and storing the determined date and time in association with the stored indication of the manual activation. Since Canipe '288 does not disclose storing date and time of manual deactivation, rather than obvious expedient as argued in the Office Action,

this rejection is again traversed and it is requested that a reference be cited disclosing the limitation, or the rejection be removed. MPEP § 2144.03.

In new Claim 84, the step of transmitting an indication of the detected manual activation comprises (a) selecting a special data code, corresponding to a machine-readable optical code but distinguishable by the POS terminal from a product code, as a predetermined data code corresponding to the detected manual activation and (b) transmitting the special optical code from the data reader to the POS terminal or host system. Since the data reader is already programmed to send and the POS terminal or host system is already programmed to receive optical code data from machine readable optical codes, the data reader can serve as an interface for transmitting this indication of detected manual activation utilizing the same transmission mechanism (*i.e.*, optical code data) to transmit this information to the POS terminal or a host system. Canipe '288 provides no such disclosure or its advantages.

C. Claim 57

In rejecting Claim 57, the Office Action indicates that Canipe '288 is silent with respect to disclosing an optical

code, but notes that the claim does not recite a machine readable optical code, such as a bar code. Rather than argue the point, the claim has been amended to specify "the indication of the manual deactivation comprising a data code corresponding to a predetermined machine readable optical code."

In contrast, Canipe '288 discloses logging failed deactivation of the EAS tag and does not suggest employing a data code corresponding to a predetermined machine readable optical code as the indication of manual deactivation. Moreover, Canipe '288 does not transmit information at all with respect to successful manual deactivation but only appears interested in failed deactivation as previously discussed above. Therefore it is submitted that Canipe '288 fails to disclose several limitations in the method of Claim 57 and therefore a *prima facie* case of obviousness cannot be made. Moreover there is no suggestion to modify Canipe '288 to reach the combination of Claim 57. In the method of Claim 57, it is advantageous that the data reader can transmit this information of successful manual deactivation using the same type of data code that it is already using for data reading, namely via machine readable optical codes not only for the product codes as normally

transmitted but also for this indication of successful manual deactivation.

Though Wike '602 does disclose employing UPC type code data, it uses it only for associating/identifying an item being purchased (see, Paragraph 0040), presumably for sending the item identification to the POS. The only use for these codes described in Wike '602 is as product codes. In contrast, Claim 57 includes the step of transmitting an indication of manual deactivation to the POS terminal, the indication of the manual deactivation comprising a data code corresponding to a predetermined machine readable optical code. Thus the optical code data reader of Claim 57 employs the same type of data codes for transmitting indication of the manual deactivation as well as typical product code information. In fact, Wike '602 is completely silent as to manual deactivation as opposed to automatic deactivation. The system in Wike '602 is a self checkout system in which the customer is performing the various checkout functions of placing in position to read the bar code label and then placing the article in the bag well where the EAS deactivation system can deactivate the EAS tag on the item. The activation of the EAS system is only automatic in response to successful reading of a bar code label on an item and detection

of an EAS tag. A manual deactivation would be precisely contrary to a self checkout system whereby the customer would be allowed to deactivate an EAS tag outside of the control of the system.

Therefore it is submitted that neither Canipe '288 nor Wike '602 establishes a *prima facie* case of obviousness of Claim 57 and it is submitted that Claim 57 is not nonobvious and allowable.

D. Dependent Claims 60-62

Claims 60-62 should also be allowable in part as depending upon an allowable base claim. Certain of these claims will be further discussed in the following.

Claim 60 as amended includes the limitation "wherein said predetermined optical code comprises a specially reserved universal product code." UPC code numbers are assigned by the appropriate trade authority, so for example, a company seeking to place a UPC barcode on its product, such as a candy bar, the company must obtain a specially reserved UPC code:

Before a company can begin using bar codes, they must create the numbers that go inside the bar code. These numbers are called GS1 identification numbers (keys). The first step in building a identification

number is to obtain a GS1 Company Prefix from the GS1 Member Organization in your country. GS1 Company Prefixes are used to identify over 1 million companies today and form the foundation of uniquely identifying everything in the supply chain. For companies/organizations in the United States, obtain a GS1 Company Prefix from GS1 US by completing a Partner Connections membership application.

See,  [http://barcodes.gslus.org/dnn\\_bcec/Default.aspx?tabid=300](http://barcodes.gslus.org/dnn_bcec/Default.aspx?tabid=300)

Thus according to Claim 60, a specially reserved universal product code is used for the indication of manual deactivation. Though Wike '602 may disclose employing UPC type code data for sending product identification information, there is no disclosure of using a UPC code for transmitting indication of manual deactivation as in Claim 60. In fact, Wike '602 is completely silent as to manual deactivation as opposed to automatic deactivation.

#### E. Claims 67-76 and New Claims 85-86

As amended, Claim 67 includes the steps of detecting a predetermined event of the data reader or the electronic tag system; selecting a data code corresponding to a machine readable, special optical code, the data code corresponding to the detected event; and

transmitting the selected special optical code to the host system as a special code that does not identify a product.

In contrast, Canipe '288 does not select a data code corresponding to a machine readable, special optical code corresponding to a detected event. The only optical codes disclosed in Canipe '288 are standard barcodes corresponding to product codes that identify a product. Thus in the host communication method of Claim 67 is able to use a common process for sending (1) conventional optical codes representing a product and (2) special optical codes representing the detected special event thereby providing dual purpose communication to the host. Canipe '288 does not disclose or suggest such a method. It is therefore submitted that a *prima facie* case of obviousness has not been made and thus Claim 67 is nonobvious and allowable over Canipe '288.

It is also submitted that dependent Claims 68-76 are also allowable in part as depending upon an allowable base claim. Certain of these claims also provide additional distinguishing limitations, certain of which will now be discussed in the following.

In Claim 70, the detected special event is an indication of hardware failure. There is no discussion in Canipe '288 of

transmitting a detected event that is an indication of a hardware failure to a host and particularly transmitting such information via a special optical code as claimed.

As to Claim 75 which includes the limitation "wherein the detected event comprises a successful manual deactivation event" as previously described, Canipe '288 does not disclose reporting of a successful manual deactivation.

In new Claims 85-86 the detected event comprises a hardware failure, and in Claim 86 the hardware failure comprises a failure in a power supply of the electronic tag system. There is no disclosure in Canipe '288 of such a combination.

#### IV. Conclusion

It is submitted that the restriction as to Claims 77-83 should be withdrawn, the claims rejoined, and those claims examined and allowed. Therefore it is respectfully submitted that Claims 52-57, 60-62, 67-86 are allowable and a Notice of Allowance is earnestly solicited.

Respectfully submitted,

Dated: February 25, 2008

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Attorney Docket No. 51306/889:1